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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

RONNIE ERICK PEREZ,

Defendant and Appellant.

B173597

(Los Angeles County
Super. Ct. No. VA074414)

APPEAL from a judgment of the Superior Court of Los Angeles County.
William J. Birney, Jr., Judge. Affirmed.

Law Offices of Joseph H. Hofman and Joseph H. Hofman for Defendant and
Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney
General, Pamela C. Hamanaka, Assistant Attorney General, Mary Sanchez and
Stephanie A. Miyoshi, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Appellant Ronnie Erick Perez challenges his robbery and attempted robbery convictions on the ground they were not supported by sufficient evidence. We conclude ample evidence supports his convictions.

BACKGROUND AND PROCEDURAL HISTORY

At 10:05 p.m. one night, appellant pointed a gun at Miguel Perez Jauregui, who was working behind the counter at an AM/PM store. Appellant demanded money, but Jauregui fled. At 10:13 p.m. the same night, appellant approached Alma Morales, an employee of a restaurant. He pointed a gun at her and ordered her to open the cash register. She complied and gave appellant about \$300. Upon his further demand, Morales surrendered her jewelry to appellant.

A jury convicted appellant of one count of attempted second degree robbery and one count of second degree robbery. It also found, with respect to each count, that appellant personally used a gun in the commission of each crime. The trial court sentenced appellant to 13 years in prison.¹

DISCUSSION

Appellant contends the evidence was insufficient to support his robbery and attempted robbery convictions. He argues the identification evidence was “flimsy,” no physical evidence linked him to the crimes, and he had an alibi.

To resolve this issue, we review the whole record in the light most favorable to the judgment to decide whether substantial evidence supports the conviction, so that a reasonable jury could find appellant guilty beyond a reasonable doubt. (*People v. Ceja* (1993) 4 Cal.4th 1134, 1138.) The substantial evidence test applies to out-of-court

¹ Appellant received an additional two-year, consecutive term in case number VA075053, in which he pled guilty to two counts of committing lewd acts with a child under the age of 14 years.

identifications as well. (*People v. Cuevas* (1995) 12 Cal.4th 252, 257, 272.) Such identifications need not be corroborated. (*Ibid.*)

Testimony believed by the trier of fact is rejected on appeal only if it is physically impossible or obviously false. (*People v. Allen* (1985) 165 Cal.App.3d 616, 623.) Weaknesses and inconsistencies in eyewitness testimony are materials for the jury to evaluate. (*Ibid.*) Conflicts and even testimony subject to justifiable suspicion do not justify the reversal of a judgment; it is the exclusive province of the trier of fact to determine credibility and the truth or falsity of the facts upon which credibility depends. (*Ibid.*)

Jauregui testified he looked at the gunman for about seven seconds before leaping over the counter and fleeing from the AM/PM store. He identified appellant from a six-pack of photographs shown to him by the police about two weeks after the incident and later at trial. He remembered that the man who tried to rob him had a mustache, but he did not recall other details of his face. He testified the would-be robber was no taller than his height of 5 feet 5 inches. The man wore a black hooded sweatshirt with a hood pulled down nearly to his eyes. On cross-examination, Jauregui testified that when he looked at the photographs, he was under the impression that the man who tried to rob him would be in the group of pictures and that he had to make an identification. On direct and re-direct examination, however, he testified the detective reviewed with him a set of written advisements that told him, inter alia, that he was not obligated to identify anyone and that the culprit might not be depicted in the photographs. Jauregui dated and signed a form indicating he understood the advisements. Nonetheless, he still believed the photographic array would contain a picture of the man who tried to rob him.

Jauregui saw appellant enter an older, small blue car driven by another person. Stacey Chavira, who was just about to enter the AM/PM store, noticed that people in the store were running out. She saw the cashier jump over the counter and run out of the store. She then saw a man holding a gun walk out of the store in a nonchalant manner. She observed the man with the gun for about 10 seconds. He was taller than her height

of 5 feet 3 inches by two or three inches. She had previously testified that he did not have any facial hair. He wore a navy blue sweatshirt with the hood pulled up onto his head. At trial and at appellant's preliminary hearing, she identified him as the man she saw leaving the store with a gun in his hand. She also identified appellant's photograph in a six-pack of photographs shown to her by a detective. Appellant got into the passenger side of an older, light blue Nissan Sentra. Chavira had previously seen a bald, heavily tattooed man standing outside the car near the open driver-side door. The car drove away toward Montebello. A little later, the police drove Chavira to another location and asked her to look at a car and a man. She identified the blue car as the one in which the gunman had fled. She identified the man as the driver of that car.

Morales testified the man who robbed her wore a black or dark blue sweater with a hood. She looked at him, but he had a bandana over part of his face. She was able to see his eyes. She identified appellant's photograph in a six-pack of photographs shown to her by a detective. She told him she recognized the eyes of the person whose picture she selected. She thought the robber was a little taller than her height of 5 feet 2 inches. However, she was not thinking about his height during the robbery. She previously testified that he was about her height. The robber stood across the counter from her for approximately two minutes. After the robber took the money and jewelry, he left the restaurant and got into the passenger side of a blue Toyota or Nissan that sped away. The police later took Morales to a location about two blocks from the restaurant to look at a car that was similar to the robber's getaway car.

Shortly after the restaurant robbery, a blue Nissan Sentra registered to Ronnie Perez collided with a curb approximately one mile from the AM/PM store. Two men got out of the Nissan Sentra and fled on foot. Montebello Police Officer Randy Jaso chased and detained one of the running men, who was Robert Arras. Arras dropped a pair of gloves and cash as he ran. Two of appellant's identification cards were discovered in Arras's possession when he was booked.

Appellant's mother, Magalys Perez, testified that appellant went out on the night

in question with Viviana Fregoso, who is also known as Nallely. Appellant returned home between 10:00 and 10:10 p.m. Instead of using his key, he knocked at the door. He was carrying the house number sign that normally hung above the front door. He was pale, seemed nervous, and was accompanied by another person. Appellant told his mother he was robbed of his car, license, and mobile phone at an In-N-Out Burger. He said Fregoso was with him at the time of the robbery. He was afraid to report the robbery to the police, but his mother eventually convinced him to go to the police station with her and his brother to file a report.

Appellant testified that on the night in question he went with Nallely Fregoso to a movie. They began to argue, and left before the movie finished. Appellant drove her home, and then went to In-N-Out Burger and ate. At about 9:45 p.m., as he was “barely pointing the key” at his car door, two men dressed all in black and wearing masks approached him. One of them pointed a gun at him and demanded his keys and wallet. The robber removed \$20 and appellant’s driver’s license from his wallet, and then demanded appellant’s mobile phone and necklace. The robber without a gun removed the necklace from appellant’s neck. They returned his wallet to him and told him to lie on the ground, and then left in his car. Appellant walked and ran home. He did not call the police because the men had threatened him. When he arrived home, he removed the house number in order to prevent the robbers from locating his home from the address on his license. He denied telling his mother that Fregoso was with him at the time of the robbery. He also denied he knew Arras and denied involvement in the charged robberies. He testified he was 5 feet 11 inches tall.

Nallely Fregoso testified she knew appellant and she previously had gone to see a movie with him. However, she did not go to a movie or otherwise spend any time with him on the date of the crimes. She also had never argued with him during a movie.

Downey Police Officer Scott Loughner took the report when appellant went to the police station. Appellant told Loughner the robbery occurred at about 10:45 p.m. He initially said “a guy” approached him in the In-N-Out Burger parking lot and told him to

hand over everything he had. Appellant gave the man his keys, wallet, phone and two necklaces. In response to Loughner's request for additional detail, appellant repeated the same statement, but added that the man had a gun. Loughner was surprised appellant had not mentioned the gun the first time around. Appellant was unable to provide any description of the gun. Appellant appeared evasive and nervous to Loughner. When asked where he was in relation to his car when the robber approached, appellant originally said he was two cars away from his own. Loughner then asked how the robber knew which car belonged to appellant, and appellant said he was getting into his car. Appellant never said that more than one suspect approached him. He described a single robber to Loughner. When Loughner asked appellant why he waited so long to report the crime, he said he did not have a ride. When asked why he did not call 911, appellant said he was nervous. Loughner was familiar with the In-N-Out Burger where appellant said he was robbed. The parking lot was well lit and bordered by two busy streets. The restaurant tended to be extremely busy at 9:45 p.m. or 10:45 p.m. on a Friday night.² The farthest row in the parking lot was just 30 to 40 feet from the drive-through lane. Private security guards hired by the restaurant patrolled the parking lot, although Loughner did not know if any guards were on duty when appellant claimed he was robbed.

Substantial evidence supported the jury's finding that appellant committed the two charged robberies. Jauregui and Chavira identified appellant both prior to and during trial. Morales was not asked to identify appellant at trial, but identified appellant's photograph in a six-pack shown her by the police. Although each of these witnesses estimated the robber's height as shorter than appellant's claimed height, the identification evidence was neither physically impossible nor obviously false. Any weaknesses, inconsistencies, or other grounds to doubt the accuracy of the identification evidence were matters for the jury to evaluate. Appellant's defense was misidentification, and defense counsel extensively argued the weaknesses and inconsistencies in that evidence,

² The charged crimes occurred on Friday, August 23, 2002.

including the difference between appellant's height and the height described by the victims and witness.

It was undisputed that appellant's car was involved in the robberies. Appellant's alibi was contradicted by Fregoso. His story of carjacking and robbery was subject to considerable doubt given the inconsistencies between his statement to his mother, his report to Officer Loughner, and his trial testimony. Appellant told Loughner he was robbed at about 10:45 p.m., which was after the charged robberies and the discovery of his abandoned car. At trial, he testified he was robbed and his car was taken at about 9:45 p.m., which would mean his car was in the custody of the carjackers when it was used in the charged robbery and attempted robbery. Although he testified two men robbed him, he told Loughner only about one man. Appellant's mother testified he told her Fregoso was with him at the time of the robbery, but appellant testified he had already taken her home. He changed his story about his exact position when the robber approached him after Loughner questioned how the robber would know which car was his. Additionally, his revised statement to Loughner that he was entering his car differs from his trial testimony that he was near his car and had not yet put the key in the door to unlock it. Appellant's mother testified that appellant arrived home with an unidentified person. In his trial testimony, however, appellant made no mention of finding a companion as he ran and walked home from In-N-Out Burger. Appellant's explanations for his delay in reporting the robbery and carjacking also differed somewhat. Although he testified he had been fearful because he was threatened, he initially told Loughner he had no ride. Only when asked why he did not telephone 911 did he refer to being "nervous."

In addition to the numerous inconsistencies in appellant's statements and testimony, Officer Loughner testified that appellant seemed evasive as he made his police report. Loughner's testimony also suggested that a robbery and carjacking such as that which appellant described was improbable at the particular In-N-Out Burger due to the large number of patrons at the restaurant and people traveling on the surrounding streets,

the lighting conditions, and the possibility security guards were on duty.

For all of these reasons, a reasonable jury could find appellant guilty beyond a reasonable doubt of the charged crimes. Arras's possession of appellant's identification card and driver's license was unusual and potentially supported appellant's carjacking theory. However, this fact, along with appellant's testimony and that of his mother, was before the jury, which apparently rejected the defense. Appellant's sufficiency of evidence contention essentially asks this court to reweigh the evidence, which we cannot do. Ample evidence supports his robbery and attempted robbery convictions.

Appellant's briefs mention other issues, including an alleged due process violation through the use of unduly suggestive pretrial identification procedures. However, appellant forfeited consideration of these issues, if he indeed intended to raise them, by failing to brief them under separate headings. (Cal. Rules of Court, rule 14(a); *Hansen v. Sunnyside Products, Inc.* (1997) 55 Cal.App.4th 1497, 1503-1504, fn. 2.) In any event, appellant neither specifies the pretrial identification procedure nor supports such a claim with specific argument regarding why the procedure was unduly suggestive. It appears appellant has confused weaknesses or inconsistencies in identification evidence with improperly suggestive pretrial identification procedures.

DISPOSITION

The judgment is affirmed.

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BOLAND, J.

We concur:

COOPER, P. J.

FLIER, J.